vant to the third charge is section 74 of the Road Traffic Ordinance, 1958 which reads:

"(1) Subject to the provisions of this Part of this Ordinance it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle unless there is in force in relation to the user of the motor vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of the Part of this Ordinance.

(2) If a person acts in contravention of this section, he shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding one thousand dollars or to both such imprisonment and fine, and a person convicted of an offence under this section shall, unless the court for special reasons to be specified in the order thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for holding or obtaining a driving licence under Part II of this Ordinance for a period of twelve months from the date of the conviction.

(3) A person disqualified by virtue of a conviction under this section or of an order made thereunder for holding or obtaining a driving licence shall, for the purposes of Part II of this Ordinance, be deemed to be disqualified by virtue of a conviction under the provisions of that Part."

There are other provisions but these do not concern us here. Now subsection (2) consists of two limbs, viz.:

(i) Liability to imprisonment or fine or both for *contravention of this section;* and

(ii) Mandatory disqualification for holding or obtaining a driving licence by a person *convicted of an offence under this section.*

The authorities dealing with the interpretation of the words "shall be liable" were reviewed by the Federal Court in *Jayanathan* v. *Public Prosecutor*[1] and it is clear from these authorities that the court may exercise its powers under section 173A Criminal Procedure Code in respect of an offence under section 74 of the Road Traffic Ordinance. It follows in such a case (as it did in this case) that no "conviction" is recorded.

The question then will disqualification follow. The word 'conviction' appearing in the section must be taken in its technical sense, that is to say, the court must record a 'conviction' as such. On a reading of the subsection as a whole therefore it would appear that disqualification will only follow if a conviction is recorded. This is because if the legislature had intended to disqualify any person who contravenes the section whether convicted or not, there would not be any need to insert the words appearing after "fine, and" the words "a person convicted of an offence under this section". I am fortified in my view by a comparison of the forfeiture provisions appearing in the Customs Act and the Dangerous Drugs Ordinance on proof of offence or breach of condition notwithstanding that no person may have been convicted of an offence or breach.

It is on this interpretation of the subsection that Magistrates who consider that disqualification for a period of 12 months would be harsh in any particular case invoke the provisions of section 173A Criminal Procedure Code.

The offence is no doubt a serious one and from my experience, Magistrates have imposed very heavy fines in respect of such offences and even imposed a disqualification of more than 12 months but for the purpose of this appeal the only question is whether the Magistrate's order is lawful or not. I am inclined to think that it is.

This view, however, is in direct conflict with the Court of Appeal decision in *Chan Tak Sang* v. *Public Prosecutor*[2] where it was held at page 257:

"The intention of this regulation appears to be that every person who is found to have acted in contravention of the regulation, whether convicted thereof or not, shall automatically be disqualified for a period of twelve months."

The court was dealing with Regulation 3(2) of the Motor Vehicles (Third Party Risks) Regulations, 1946 but the provisions of that regulations are *in pari materia* with section 74(2) of the Road Traffic Ordinance. As a decision of the Court of Appeal is binding on all courts subordinate to it, it must be followed until otherwise altered by the Federal Court.

I would accordingly hold that:

(i) The Magistrate in the exercise of judicial discretion has the power to make an order under section 173A Criminal Procedure Code for a contravention of section 74 of the Road Traffic Ordinance; and

(ii) On the authority of *Chan Tak Sang* v. *Public Prosecutor, supra,* whether the offender is convicted or not there is no necessity for the court to order disqualification for a period of twelve months since such disqualification is automatic.

For these reasons I would dismiss the appeal.

Appeal dismissed.

PUBLIC PROSECUTOR v. DAVID NOORDIN

[R.Cr.J. (Harun J.) October 12, 1979]

[Kuala Lumpur — Criminal Revision No. 12 of 1979]

Criminal law and Procedure — Adjournments — Application for adjournment by prosecution — Order of discharge not amounting to acquittal — Order set aside — Criminal Procedure Code (F.M.S. Cap. 6), ss. 173(g) & 254.

In this case the accused was charged with cheating. The accused was first charged on January 29, 1975 and the case was fixed for trial on September 15-17, 1975. On that day the prosecution amended the charges and as a result the case was postponed to February 5 and 6, 1976. Counsel for accused did not appear on February 5, 1976 and the trial was postponed again to August 12 and 13, 1976. On August 12, 1976 a material witness was warded in hospital, having been involved in a motor accident and the hearing was postponed to January 17, 1977. On January 17, 1977 the prosecution said that one day was insufficient and in the event the trial was again postponed to September 22 and 23, 1977. On September 22, 1977 counsel for defence applied for an adjournment on the grounds that he was engaged in the High Court. Hearing was postponed to May 15 and 16 1978. On May 15, 1978 the hearing was again adjourned to August 10 and 11, 1978, as the prosecuting officer said he was engaged in a part-heard case in another court. On August 10, 1978 counsel for the accused requested for a postponement as he had just been retained. Hearing was postponed to October 12 and 13, 1978. On October 12 and 13, 1978 there was a part-hearing but the hearing could not be completed and the hearing was adjourned to January 15-19, 1979. The trial could not proceed in January 1979 as the prosecuting officer was on medical leave. It was adjourned to September 24-28, 1979. When the hearing was resumed on September 24, 1979 the prosecution said it could

not proceed with the case as their witnesses were overseas. The learned Magistrate thereupon discharged the accused, the discharge not amounting to an acquittal. The police promptly rearrested and recharged the accused.

Held: the learned Magistrate should not have made the order of discharge not amounting to acquittal and the case should therefore be returned to the court for the hearing to be resumed and continued until completion.

Cases referred to:-

(1) *Public Prosecutor* v. *Semban* [1976] 1 M.L.J. 91.

(2) *Public Prosecutor* v. *Hettiarachigae L.S. Perera* [1977] 1 M.L.J. 12, 14.

CRIMINAL REVISION.

Mah Weng Kwai (Deputy Public Prosecutor) for the Public Prosecutor.

Respondent absent and unrepresented.

Cur. Adv. Vult.

Harun J.: I called for the record of this case on reading a newspaper report that the prosecution could not proceed with the trial and the court made an order of discharge not amounting to an acquittal whereupon the accused was promptly re-arrested and recharged for the same offences.

According to the record, the accused is alleged to have committed offences of cheating contrary to section 420 of the Penal Code involving large sums of money in the months of April and October 1972. The complaint was lodged on September 11, 1974 and the accused was first charged in court on January 29, 1975.

The trial was fixed from September 15-17, 1975 but on that day the prosecution amended the charges. I pause here to observe that the prosecution had ample time to reconsider the charges, the trial having been fixed some seven months after the accused was first produced in court yet elected to amend the charges on the day the trial was to commence. Now this is a valid ground for postponement of the trial as the defence must be given time to take fresh instructions on the amended charges, particularly in a complicated case of cheating involving company funds. The prosecution must be aware of such a possibility and ought, therefore, to have intimated to the defence well before the trial date by sending a copy of the proposed amendments to the defence so that the trial may proceed on the appointed dates. In the event the trial was postponed to February 5 and 6, 1976.

When the case came up for hearing on February 5, 1976, counsel retained by the accused did not appear but sent another counsel on his behalf. No reason was given for this absence and the trial was postponed again to August 12 and 13, 1976.

On August 12, 1976, a material witness had been involved in a motor accident and was warded in hospital. Instead of proceeding with the trial with the witnesses already in court, the hearing was again postponed to January 17, 1977 on the application of the prosecution with the defence not objecting and the court acquiescing.

On January 17, 1977 all was ready for the trial to proceed but the prosecution pointed out that one day was insufficient for the trial. They wanted at least three days. Now this should have been obvious to all concerned from the very beginning and the appropriate number of days allotted for the trial. In the event the hearing was postponed again to September 22 and 23, 1977.

On September 22, 1977 counsel for the defence applied for an adjournment on the grounds that he was engaged in the High Court. Hearing was postponed to May 15 and 16, 1978.

On April 11, 1978, the prosecution applied for the evidence of the complainant to be recorded as he was leaving the country for good on April 15, 1978. This evidence was recorded on April 14, 1978 and the case adjourned to May 15 and 16, 1978.

On May 14, 1978 the accused clarified to the court who his actual counsel was as by now he had been represented by four different counsel. The prosecuting officer said that he was engaged in a part-heard case in another court and could not go on May 15 and 16. So the hearing was adjourned to August 10 and 11, 1978.

On August 10, 1978, counsel for the defence requested for a postponement as he had just been retained. The prosecution had no objections and so hearing was postponed to October 12 and 13, 1978.

On October 12 and 13, 1978, five prosecution witnesses gave evidence, two from Penang and three from Kedah. The trial could not be concluded as the witnesses gave lengthy evidence and further hearing was adjourned to January 15-19, 1979. However, the trial could not proceed in January as the prosecuting officer was on medical leave. It was adjourned to September 24-28, 1979, a much longer date for continued hearing to enable the accused to go overseas.

When the hearing was resumed on September 24, 1979, the prosecution said it could not go on with the case as their witnesses were away overseas. It was at this stage that the learned Magistrate made the order of discharge not amounting to an acquittal. I have already said in *Public Prosecutor* v. *Semban*[1] that in such circumstances a Magistrate should not make an order of discharge not amounting to an acquittal: see also *Public Prosecutor* v. *Hettiarachigae L.S. Perera.*[2] Here the evidence so far adduced shows that the charge was neither groundless for an order of discharge not amounting to an acquittal under section 173(g) Criminal Procedure Code to be made nor was the prosecution declining to prosecute under section 254 Criminal Procedure Code because the police promptly re-arrested and re-charged the accused. It is not clear from the record under which provision this order was purportedly made. May I remind Magistrates that they must state clearly on the record the section of the Criminal Procedure Code under which an order is made as the effect of such orders will determine the conduct of subsequent proceedings.

A trial *de novo* would be unjust in this case as the record shows that the complainant who has given evidence has left the country for good and five witnesses who had also testified had come from the northern States. It is unjust to the prosecution be-

cause they might not be able to get the complainant back in this country again and it is unjust to the accused because all the fees he has paid to counsel have been simply wasted.

The alleged offences took place more than seven years ago. The trial has dragged on for more than five years. It has been postponed 13 times and a considerable amount of valuable court time and public expense have been wasted. All concerned must share in the blame. But the case should not go on indefinitely because that will be a great injustice to the accused. The Public Prosecutor should therefore review this case and if he decides to proceed, to do so within a reasonable time. On the other hand, it may well be that they cannot proceed with the case now as the prosecution witnesses are overseas and their dates of return unknown. In that event the prosecution should apply to the court to stay the proceedings under section 254(ii) Criminal Procedure Code and the learned Magistrate would be justified in making an order of discharge not amounting to acquittal. If such an order is made, it should not be followed by a prompt re-arrest and re-charge because it will be inconsistent with the grounds on which the application for stay was made. The accused should only be re-arrested if at all, when the prosecution is in a position to proceed with the trial.

For these reasons, I set aside the order of discharge not amounting to an acquittal and order that the hearing be resumed on November 12, 1979 and continued from day to day until completed. The accused is to be produced before the Magistrate at the earliest opportunity.

Order accordingly.

LIM CHO HOCK v. GOVERNMENT OF THE STATE OF PERAK, MENTERI BESAR, STATE OF PERAK AND PRESIDENT, MUNICIPALITY OF IPOH

[O.C.J. (Abdoolcader J.) March 6 & 7, 1979, May 13 & 14 & June 3, 1980]

[Ipoh — Civil Suit No. 80 of 1980]

Administrative Law — Appointment of State Menteri Besar as President of Municipal Council — Legality and validity of — Locus standi of plaintiff — Plaintiff rate payer — Whether question theoretical — Local Government Act, 1976, ss. 1, 3, 9, 10 & 165.

Local Government — President of Municipal Council — Appointment of State Menteri Besar as President — Whether legal and valid — Local Government Act, 1976, ss. 1, 3, 9, 10 & 165.

Interpretation of Statutes — Purposive approach to construction.

Practice and Procedure — Declaratory judgment — Locus standi of plaintiff — R.H.C., 1980, O. 15 r. 16.

These proceedings arose out of the appointment by the State Authority, i.e., the Ruler-in-Council of the Menteri Besar of Perak as President of the Ipoh Municipal Council. The plaintiff sought declarations that the offices of Menteri Besar and President of the Council could not be held by the same individual, that the appointment of the Menteri Besar as President of the Council was inoperative and null and void, and that the State Authority had exceeded its powers in making this appointment. The plaintiff was a member of Parliament for the parliamentary constituency of Ipoh as well as a member of the Perak State Legislative Assembly for the constituency of Kepayang and a ratepayer within the Council area.

Held: (1) in the light of the authorities there was no reason to deny standing to the plaintiff as a ratepayer to institute and seek the relief he did in these proceedings;

(2) the question of the appointment assailed by the plaintiff raised a substantive issue for determination by the court; the plaintiff was accordingly entitled to apply to court for the declarations he sought. The primary question posed for determination was not premature or academic or purely conjectural as the defendants submitted;

(3) the court could see no impediment to the appointment of the State Menteri Besar as President of the Municipality in this case in view of the several courses which were open for the resolution of any difficulty presented in the event of any differences or disagreement between the President of the Council and the other Councillors. The appointment in this case did not make illusory the provisions of the Act which the plaintiff relied on;

(4) the court's power to make declaratory judgments is confined to matters justiciable in the courts, and the binding declarations which it could make under Order 15 rule 16 of the Rules of the High Court, 1980 are limited to legal or equitable rights and do not extend to moral, social or political matters;

(5) applying a purposive construction, the Local Government Act, 1976 did not preclude the appointment of the Menteri Besar as President of the Council, and that his appointment as such was lawful and valid.

Cases referred to:-

(1) *Lim Cho Hock* v. *The Speaker, Perak State Legislative Assembly & Anor.* [1979] 2 M.L.J. 85.

(2) *Prescott* v. *Birmingham Corporation* [1955] Ch. 210.

(3) *Bradbury* v. *Enfield London Borough Council* [1967] 1 W.L.R. 1311.

(4) *Lee* v. *Enfield London Borough Council* (1967) 66 L.G.R. 195.

(5) *Durayappah* v. *Fernando* [1967] 2 A.C. 337, 352.

(6) *Thorson* v. *Attorney-General for Canada (No. 2)* (1974) 43 D.L.R. (3d) 1, 19.

(7) *Nova Scotia Board of Censors* v. *McNeil* (1975) 55 D.L.R. (3d) 632.

(8) *Gouriet* v. *Union of Post Office Workers* [1978] A.C. 435, 480.

(9) *Fitzgerald* v. *Muldoon* [1976] 2 N.Z.L.R. 615.

(10) *Regina* v. *Greater London Council, Ex parte Blackburn* [1976] 1 W.L.R. 550, 558-559, 564, 567.

(11) *Regina* v. *Metropolitan Police Commissioner, Ex parte Blackburn, The Times*, December 1, 1979.

(12) *Regina* v. *Inland Revenue Commissioners, Ex parte National Federation of Self-Employed and Small Businesses Ltd., The Times*, February 28, 1980; [1980] 2 W.L.R. 579; [1980] 2 All E.R. 379.

(13) *Rex* v. *Speyer* [1916] 1 K.B. 595; affd. [1916] 2 K.B. 858.

(14) *Thorne* v. *Motor Trade Association* [1937] A.C. 797, 813.

(15) *Hanson* v. *Radcliffe Urban District Council* [1922] 2 Ch. 490, 507.

(16) *Ibeneweka* v. *Egbuna* [1964] 1 W.L.R. 219, 225.

(17) *Pharmaceutical Society of Great Britain* v. *Dickson* [1970] A.C. 403.

(18) *United Hokkien Cemetries, Penang* v. *Majlis Perbandaran, Pulau Pinang* [1979] 2 M.L.J. 121, 123.

(19) *Malone* v. *Metropolitan Police Commissioner* [1979] 1 Ch. 344, 353.

CIVIL SUIT.

Karpal Singh for the plaintiff.

Haidar bin Mohamed Noor (State Legal Adviser, Perak) and *Shaik Daud bin Haji Mohamed Ismail*